



Regulation Development Update

September 28, 2018

DHEC produces this Regulation Development Update within one business day of publication of the South Carolina State Register (the fourth Friday of each month).

The Update reports DHEC's regulation development activity, including proposed new regulations, amendments, and repeals of existing regulations, currently pending. Each entry presents a synopsis, status, and (upon assignment by the S.C. Legislative Council) a searchable S.C. State Register Document Number. Legislative Council assigns a Document Number at the Notice of Proposed Regulation stage of the regulation [promulgation process](#). The Document Number subsequently remains with the particular regulation development activity throughout the process.

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While DHEC has made every effort to maintain the accuracy of content presented in this Regulation Development Update, it reserves the right to correct errors when discovered.

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NO PENDING REGULATION DEVELOPMENT ACTIVITY FOR:

The following program areas have no pending regulation development activities at this time.

Chief Financial Officer

Budgets and Financial Management

General Counsel

Environmental Affairs

Environmental Affairs Administration
Ocean and Coastal Resource Management

Health Regulation

Certificate of Need
Drug Control
Emergency Medical Services and Trauma
Radiological Health

Public Health

Public Health Preparedness
Maternal and Child Health Services

There are no DHEC Emergency Regulations in effect at this time.

PENDING REGULATION DEVELOPMENT ACTIVITY FOR:

The following program areas have pending regulation development activities at this time.

ENVIRONMENTAL AFFAIRS

AIR QUALITY – Proposed Amendments

R.61-62, Air Pollution Control Regulations and Standards

State Register Document 4815

Summary:

- (1) The Department proposes amending Regulation 61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits.
- (2) The Department proposes amending the introductory paragraph to Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text.
- (3) The Department proposes amending Regulation 61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (4) The Department proposes amending Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (5) The Department proposes amending Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (6) The Department proposes amending Regulation 61-62.70, Title V Operating Permit Program; Regulation 61-62.1, Definitions and General Requirements; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; and Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to update public participation procedures.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, that may include definitional updates, clarification of certain permitting provisions, and other changes or additions as deemed necessary, as well as corrections for internal consistency,

clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4815.docx>

History and Status:

Notice of Drafting published:	October 27, 2017
Drafting comment period closed:	November 27, 2017
Board approval to publish Notice of Proposed Regulation:	June 7, 2018
Notice of Proposed Regulation published:	June 22, 2018
Proposed Regulation comment period closed:	July 23, 2018
Public Hearing:	November 8, 2018 (scheduled) September 13, 2018 (cancelled)

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R.61-62, Air Pollution Control Regulations and Standards

State Register Document TBD

Note: These proposed amendments were previously published as Document Number 4814, which is terminated as of September 28, 2018. A new Notice of Drafting with changes to the proposed amendments has been published.

Summary:

The United States Environmental Protection Agency (EPA) has been promulgating amendments to the Code of Federal Regulations throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include technical amendments regarding New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAP), and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

The Department proposes amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; R.61-62.61, National Emission Standards for Hazardous Air Pollutants, and R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference recent federal amendments promulgated from January 1, 2017, through December 31, 2017. The Department also proposes changes to R. 61-62.68, Chemical Accident Prevention Provisions, to maintain compliance with federal law and make corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary. Additionally, the Department proposes striking paragraph (a)(6) of Section 70.3, Applicability, in R.61-62.70, Title V Operating Permit Program, to maintain state compliance with federal regulations.

The Department also proposes amending R.61-62.96 to repeal the Clean Air Interstate Rule (CAIR) trading program regulations (Subparts AA through II, AAA through III, and AAAA through IIII) and reinstate applicable portions of the EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NOX SIP Call), with amendments as necessary, to maintain state compliance with federal regulations. The Department adopted R.61-62.97, the Cross-State Air Pollution Rule (CSAPR) Trading Program, on August 25, 2017. Subparts AA through II, AAA through III, and AAAA through IIII of R.61-62.96 are based on the federal CAIR regulation, which EPA has since replaced with federal CSAPR requirements implemented by R.61-62.97. As a result, federal CAIR requirements implemented by R.61-62.96 are no longer in effect. The proposed NOX SIP Call regulations will maintain state compliance with federal NOX SIP Call requirements that remain applicable following the sunseting and repeal of CAIR.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, as deemed necessary to maintain compliance with federal law. These changes may include, but are not limited to, corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement of the text of Regulation 61-62 as necessary.

In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law.

History and Status:

Notice of Drafting published:	September 28, 2018
Drafting comment period will close:	October 29, 2018
*This Notice of Drafting supersedes the previous one published on March 23, 2018.	

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ENVIRONMENTAL HEALTH SERVICES – Proposed Amendments and Repeals

R.61-25, Retail Food Establishments

R.61-37, Retail Food Establishment Inspection Fees

State Register Document TBD

Summary:

Currently, R.61-25 is based on the 2013 Federal Food and Drug Administration (“FDA”) Food Code (“Food Code”), which the FDA has revised and replaced with the 2017 Food Code. The Department proposes amending R.61-25 to incorporate much of the revisions appearing in the 2017 Food Code. Furthermore, the Department proposes to revise selected sections of Chapter 9 to reflect the current business models of the food service industry and input from the regulated community. The Department also proposes amending the fee scale currently appearing in R.61-37, and, in the interest of efficiency, moving the amended fee scale to R.61-25 and repealing R.61-37. The fee scale revision would also include a fee increase, as the Department has not updated the fees in approximately 18 years.

The Department also proposes making other changes as deemed necessary to improve the overall clarity, organization, and quality of the regulation. These changes may include, but are not limited to, stylistic changes, updates to definitions and exemptions, corrections for clarity, readability, grammar, punctuation, references, and codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

Notice of Drafting published:

August 24, 2018

Drafting comment period closed:

September 24, 2018

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R.61-55, Septic Tank Site Evaluation Fees

R.61-56, Onsite Wastewater Systems

R.61-56.1, License to Construct or Clean Onsite Sewage Treatment and Disposal Systems and Self-Contained Toilets

R.61-56.2, Licensing of Onsite Wastewater Master Contractors

State Register Document TBD

Summary:

The Department proposes amending Regulation 61-56, Onsite Wastewater Systems, to add new system standards, clarify and amend definitions, and clarify and update selected sections. The amendments will

clarify and modernize the regulation to address needed updates in administering the Onsite Wastewater program.

The Department further proposes amending the fee schedule currently appearing in R.61-55 and, in the interest of efficiency, moving the amended fee scale to R.61-56. This will entail repealing R.61-55 and simultaneously adding its provisions, as amended, to R.61-56. The proposed amendments will include amended definitions, increase in fees, a new, expedited permitting process with associated fees, and assignment of application fees to specific performed services. These amendments would update fees to an appropriate level for implementing site evaluations for proposed individual sewage treatment and disposal systems.

The Department also proposes amending provisions of R.61-56.1 and R.61-56.2 and merging R.61-56.1 and R.61-56.2 into R.61-56 to improve efficiency and clarity for Department staff, regulated entities, and the public. This will entail repealing R.61-56.1 and R.61-56.2 and simultaneously adding their provisions, as amended, to R.61-56. The proposed amendments will include changes to licensing and fee requirements for pumpers and haulers currently under R.61-56.1. The proposed amendments also will revise provisions currently contained in R.61-56.2 to implement a tiered licensing program to establish improved competency of onsite wastewater system contractors/installers. This approach includes new requirements for examination, continuing education, and an associated licensure fee.

The Department may also include stylistic changes for internal consistency, such as corrections for clarity in wording, references, grammar, outlining and codification, and such other changes as necessary to improve the overall quality of the regulation.

Legislative review is required.

History and Status:

Notice of Drafting published:

April 27, 2018

Drafting comment period closed:

May 28, 2018

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LAND AND WASTE MANAGEMENT – Proposed Amendments

R.61-79, Hazardous Waste Management Regulations (Imports and Exports of Hazardous Waste Rule)

State Register Document TBD

Summary:

The Department proposes amending Regulation 61-79 to adopt a final rule published in the Federal Register by the United States Environmental Protection Agency (“EPA”). The final rule is summarized below.

The Department proposes adopting the “Imports and Exports of Hazardous Waste” Rule, published on November 28, 2016, at 81 FR 85696-85729 and 82 FR 41015-41016. The rule amends existing requirements regarding the export and import of hazardous wastes from and into the United States. The Department proposes adopting the rule to maintain compliance with federal law and provide greater protection to human health and the environment by:

1. Making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development,
2. Enabling electronic submittal to the EPA of all export and import-related documents (e.g., export notices, export annual reports), and
3. Enabling electronic validation of consent in the Automated Export System for export shipments subject to Resource Conservation and Recovery Act export consent requirements prior to exit.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is not required.

History and Status:

Notice of Drafting published:

April 27, 2018

Drafting comment period closed:

May 28, 2018

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R.61-79, Hazardous Waste Management Regulations (Hazardous Waste Generator Improvements Rule)

State Register Document TBD

Summary:

The Department proposes amending Regulation 61-79 to adopt a final rule published in the Federal Register by the United States Environmental Protection Agency ("EPA"). The Department's adoption of the entirety of the rule is not required by federal law. The final rule is summarized below.

The Department proposes adopting the "Hazardous Waste Generator Improvements Rule," published on November 28, 2016, at 81 FR 85732-85829. Adopting the rule would reorganize the hazardous waste generator regulations to improve their usability by the regulated community, provide a better understanding of how the Resource Conservation and Recovery Act hazardous waste generator regulatory program works, address gaps in existing regulations to strengthen environmental protections, provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner, and make technical corrections to address inadvertent errors and remove obsolete references to programs that no longer exist.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

While the majority of the rule is equivalent to current state regulations and optional for state adoption, several provisions are more stringent and must be adopted by the Department to maintain federal program authorization. However, due to the interrelated nature of the equivalent provisions and the more stringent provisions, the Department proposes adopting the rule in a single drafting that will undergo General Assembly review.

History and Status:

Notice of Drafting published:

April 27, 2018

Drafting comment period closed:

May 28, 2018

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WATER – Proposed Repeal

R.61-67.1, Requirements for State Water Pollution Control Revolving Fund Loan Assistance

State Register Document TBD

Summary:

Originally authorized by Title 48, Chapter 6 of the South Carolina Code, R.61-67.1 describes the process the Department and the former South Carolina Budget and Control Board followed in administering State Water Pollution Revolving Funds received in federal grants from the U.S. Environmental Protection Agency (“EPA”). In 1992, the General Assembly repealed Title 48, Chapter 6 and replaced it with the South Carolina Water Quality Revolving Fund Authority Act (Title 48, Chapter 5). Title 48, Chapter 5 provides statutory authority for the Department and the South Carolina Water Quality Revolving Fund Authority to administer the South Carolina clean water and drinking water revolving funds and federal grants received as supplements to the revolving funds from the EPA. The South Carolina Water Quality Revolving Fund Authority is comprised of the members of the State Fiscal Accountability Authority with administrative and implementation support from the South Carolina Rural Infrastructure Authority (“RIA”).

The Department proposes repealing R.61-67.1, as the regulation is outdated due to repeal of the original authorizing statute. The Department does not propose replacing this regulation with a new regulation. The Department and RIA are able to effectively administer and implement the state revolving fund program using Title 48, Chapter 5, other existing state laws and regulations, and federal laws, regulations, and grant requirements that govern the use of the funds.

General Assembly review is required.

History and Status:

Notice of Drafting published:
Drafting comment period will close:

June 22, 2018
July 23, 2018

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HEALTH FACILITIES LICENSING – Proposed Amendment and Proposed New Regulation

R.61-93, Standards for Licensing Facilities That Treat Individuals for Psychoactive Substance Abuse or Dependence

State Register Document TBD

Summary:

The Department proposes to amend R.61-93 for provisions relating to staffing, accident and incident reporting, emergency preparedness, construction, and licensure requirements for facilities that treat individuals for psychoactive substance abuse or dependence.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

Notice of Drafting published:

June 22, 2018

Drafting comment period closed:

July 23, 2018

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R.61-125, Proposed New Regulation for Crisis Stabilization Unit Facilities

State Register Document 4809

Summary:

The Department of Health and Environmental Control (“Department”) proposes a new regulation to establish licensure and regulatory requirements for Crisis Stabilization Unit (“CSU”) Facilities. These facilities provide a short-term residential program offering psychiatric stabilization services and brief, intensive crisis services to individuals eighteen (18) years of age or older, twenty-four (24) hours a day, seven (7) days a week. Legislative review is required.

Link to Notice of Final Regulation submitted for legislative review:

<http://www.scstatehouse.gov/regs/4809.docx>

*Note: This Notice of Final Regulation did not receive a joint resolution of approval or meet the requisite 120 days of legislative review. As such, the amendments have not taken legal effect.

History and Status:

Notice of Drafting published:	May 26, 2017
Drafting comment period closed:	June 26, 2017
Board approval to publish Notice of Proposed Regulation:	January 4, 2018
Notice of Proposed Regulation published:	January 26, 2018
Proposed regulation comment period closed:	February 26, 2018
Public Hearing:	March 27, 2018 March 8, 2018 (cancelled)
General Assembly review period of Notice of Final Regulation began:	March 28, 2018

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PUBLIC HEALTH STATISTICS AND INFORMATION SERVICES – Proposed Amendment

R.61-19, Vital Statistics

State Register Document TBD

Note: The Department has decided to not move forward with these amendments at this time.

Summary:

The Department proposes amending R.61-19, Vital Statistics, as follows:

1. Revise Section 1104, Documentary Evidence Required to Correct or Amend Vital Records, subsection A.3, to clarify that the State Registrar may, at his or her discretion, allow other documents to be used for amendment of birth records.
2. Revise Section 1105, Addition of Registrant's First or Middle Names on Live Birth Records, to increase the instances in which names may be administratively added to a birth record.
3. Update the fee schedule.
4. Add a section in order to implement House Bill 3775, an act to amend Section 44-63-100, Code of Laws of South Carolina, relating in part to original birth certificates of adopted persons. The General Assembly successfully passed H.3775 on May 10, 2018, and the Governor signed the bill into law on May 17, 2018.

These proposed revisions are intended to allow greater flexibility with administrative amendments to birth records, thereby reducing the number of instances in which court orders are required. In addition, the Department's proposed fee increase is needed not only to ensure adequate funding for the program and to maintain current operations, but also for overall improvement in services to constituents and stakeholders. The last fee increase for the Vital Statistics program was July 1, 1998.

The Department may also include stylistic changes, including corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

Notice of Drafting published:	June 22, 2018
Drafting comment period closed:	July 23, 2018

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DISEASE CONTROL – Proposed Amendment

R.61-120, South Carolina Immunization Registry

State Register Document TBD

Summary:

The Department proposes amending R.61-120 to allow DHEC to provide specific Healthcare Effectiveness Data and Information Set (“HEDIS”) data from the South Carolina Immunization Registry (“Registry”) to health plans. HEDIS is a tool used by health plans to measure performance on important dimensions of care and service, including immunization data for clients. Proposed amendments to the regulation will also include: (1) details regarding the availability and use of a patient portal, which will be a feature of the new Registry allowing patients to access his or her immunization records; (2) clarifications pertaining to patient consent for the new patient portal; and (3) revisions to bring the regulation into conformity with updates and improvements to the Registry and advancements in public health practice.

The Department may also include stylistic changes, such as deletions of obsolete language, corrections for clarity and readability, grammar, punctuation, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

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April 27, 2018

Drafting comment period closed:

May 28, 2018

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PUBLIC HEALTH LABORATORY – Proposed Amendment

R.61-80, Neonatal Screening For Inborn Metabolic Errors and Hemoglobinopathies

State Register Document TBD

Note: The Department has decided to not move forward with these amendments at this time.

Summary:

The Department proposes amending R.61-80. Specifically, the amendments will address storage and usage provisions of the regulation by including a maximum length of time for storage of blood samples. The amendments will also allow for expanded testing to include other congenital disorders or metabolic diseases, while ensuring all testing procedures are in compliance with applicable standards.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

Notice of Drafting published:

June 22, 2018

Drafting comment period closed:

July 23, 2018

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